UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA, Plaintiff, v. IDAHO TRANSPORTATION DEPARTMENT, a department within the State of Idaho and SCARSELLA BROTHERS, INC. Defendants MICA BAY PROPERTY OWNERS ASSOCIATION, INC. Plaintiff - Intervener	)	No. CV-04-428-N-EJL CONSENT DECREE WITH DEFENDANT SCARSELLA BROTHERS, INC.

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INTRODUCTION

A. Whereas, the United States of America, on behalf of the United States Environmental Protection Agency ("EPA"), has filed the Complaint in this matter alleging that Scarsella Bothers, Inc. ("SBI") has violated Section 301(a) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. § 1311(a), due to its alleged violations of the Act's requirements governing the discharge of storm water. The alleged violations include claims SBI violated the Federal Storm Water Construction General Permit ("CGP") which was applicable during the pendency of the construction identified in the complaint and the compliance order issued by EPA on May 9, 2002.

B. Whereas, the Mica Bay Property Owners Association, Inc. ("Citizen Plaintiff") has filed a complaint in intervention alleging violations of the CGP (the "Complaint in Intervention").

C. Whereas SBI neither admits nor denies the allegations in the Complaint and the Complaint in Intervention, and nothing in this Decree shall constitute or be construed as an admission of liability, fact or law, or of any wrongdoing on the part of SBI.

D. Whereas, the United States and SBI have consented to the entry of this Decree without trial of any issues.

E. Whereas, the parties agree that this Decree is not intended to be used in subsequent litigation to establish either a point of law or fact; provided, however, that the foregoing shall in no way affect the binding nature of this Decree or the parties' respective obligations pursuant to this Decree, nor shall the parties be precluded from establishing the existence or content of this Decree in either subsequent litigation or subsequent proceedings in

this lawsuit where the terms or existence of the Decree may be at issue, including, without limitation, any action to enforce the terms of this Decree. This Decree does not create any rights, implied or otherwise, in any third parties, not specifically identified.

F. Whereas, these parties recognize, and this Court finds by entering this Consent Decree, that the parties have negotiated this Consent Decree in good faith, that implementation of the Consent Decree will avoid prolonged and complicated litigation between these parties, and that it is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication or admission of any issue of fact or law and upon consent and agreement of the parties, it is hereby ORDERED, DECREED, and ADJUDGED as follows:

I. DEFINITIONS

1. Except as specifically provided in this Decree, definitions for the terms used in this Decree shall be incorporated from the Clean Water Act and the regulations promulgated pursuant to that Act. Whenever terms listed below are used in this Decree the following definitions apply:

a. Best Management Practices ("BMPs") shall mean the most reasonably effective, practical schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States as well as treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

b. Clean Water Act shall mean 33 U.S.C. §§ 1251-1387 (2005).

c. Construction Activities shall mean the disturbance of soils associated with

clearing, grading, or excavating activities, or other construction-related activities.

d. Permit shall mean the Construction General Permits issued by EPA and published on July 1, 2003 (68 Fed. Reg. 39087 - 39091) and any amendments thereto, or, any permit governing storm water discharges from construction activities issued by EPA in the State of Idaho.

e. Project shall mean any location in the State of Idaho that is subject to construction activities under a contract entered into by SBI at which there is or will be construction resulting in Construction Activities greater than or equal to one acre or which is otherwise subject to the NPDES storm water construction regulations set forth at 40 C.F.R. 122.26(b)(14)(x) or 40 C.F.R. 122.26(b)(15).

f. SWPPP shall mean a Storm Water Pollution Prevention Plan as described in the CGP or other plan for controlling pollutants in storm water discharges from Projects.

II. COMPLIANCE PROGRAM

2. All SBI Superintendents and Foremen assigned to any Project shall attend a training course, presented by a third party, that meets or exceeds the requirements set out in Appendix A within sixty days of date of entry of this Decree. During the term of this Decree, each new Superintendent and Foreman assigned to any Project shall have complied with these training requirements within sixty days of assuming that position. All Superintendents and Foremen assigned to any Project shall retrain in a storm water management course presented by a third party that meets or exceeds the requirements of Appendix A every two years.

3. Prior to initiating any Construction Activities at any Project commenced after the entry of this Consent Decree, or within 45 days of the effective date of this Consent Decree for

any current Project, SBI shall designate a "Water Pollution Control Manager" ("WPCM") who shall visit the Project on a frequent basis and in no instance less than once per week during any period in which Construction Activity is occurring on the Project. SBI shall ensure that all Projects have a WPCM assigned to them during the entire life of the Project. The WPCM shall have attended, no greater than twelve months prior to his/her assumption of duties on any Project, storm water management training, presented by a third party, that meets the minimum requirements of Appendix A. The WPCM shall be responsible for ensuring compliance with the CWA, the CGP and the SWPPP and shall be responsible for regular communications with owner of the Project regarding storm water issues. SBI shall provide to EPA at the addresses specified in Paragraph 22 (Notification) the name of phone number of the WPCM for each Project.

4. SBI shall provide the United States by electronic mail to the addresses specified in Paragraph 22 (Notification) a list of all Projects for which SBI has been awarded a construction contract in the State of Idaho and for which construction has not been completed and final stabilization achieved. This submission shall be received by EPA no later than 15 days following the date of entry of this Decree, By the 15th day of every month, beginning one month after entry of this Decree, SBI shall provide the United States with notice by electronic mail at the addresses specified in Paragraph 22 (Notification) of all Projects currently under construction or for which SBI has been awarded a construction contract. Each report required by this paragraph shall include the following information for each Project: (i) SBI's Permit number, if available, (ii) the name of the Project owner where applicable (and, if available, their Permit number(s) if different than SBI's Permit number), (iii) the location of the Project including the physical address and the latitude and longitude, (iv) the job Project contact (including telephone number

and/or e-mail), (v) the best estimate for the start date of SBI's Construction Activities, and (vi) the best estimate for SBI's termination of Construction Activities and final stabilization.

5. SBI shall submit to EPA an annual report, to be received by EPA no later than January 30th, summarizing all actions taken to comply with the terms of this Consent Decree and certifying SBI's compliance with all requirements required under the Consent Decree in the previous year. This certification shall include individual statements of compliance for Paragraphs 2 through 4. This report shall be submitted either in hard copy or electrionically on a compact disc.

III. CIVIL PENALTY

6. Civil Penalty. Within 30 days after entry of this Decree, SBI shall pay a civil penalty of $400,000.

7. Payments to be Made Solely by Scarsella Brothers. SBI shall pay the civil penalty called for in the prior Paragraph, out of its own funds and shall not seek payments, reimbursement, indemnification or insurance coverage for this civil penalty from the Idaho Transportation Department, any subcontractor, any third party or any agency of the United States.

8. United States' Costs of Suit. The United States agrees that it shall not seek to recover from SBI its costs and attorneys' fees incurred prior to entry of the Decree in this action or in anticipation of this action.

9. Method of Payment. The $400,000 penalty shall be made payable to the "Treasurer of the United States" by Electronic Funds Transfer ("EFT" or wire transfer) to the United States Department of Justice lock box bank, referencing DOJ # 90-5-1-1-08052 and the USAO File Number 2004v00095. A confirmation of such transfer shall be forwarded to the

United States at the addresses specified in Paragraph 22 (Notification).

10. Payment to Citizen Plaintiff. The United States' Covenant Not to Sue set forth in Paragraph 29 is conditioned upon a payment by SBI in the amount of $500,000 in the settlement of the lawsuit Mica Bay Property Owners Association, Inc. et al v. Idaho Transportaion Department, et al. Cause No. CV-04-3064, filed in Kootenai County, Idaho, First Judicial District Court.

IV. GENERAL PROVISIONS

11. Jurisdiction and Venue. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 33 U.S.C. § 1319 and 28 U.S.C. §§ 1331, 1345 and 1355. The complaints state a claim upon which relief may be granted under 33 U.S.C. § 1319. Venue is proper under 28 U.S.C. § 1391(b) and (c). For purposes of the Decree, SBI consents to and will not contest the jurisdiction of this Court over this matter. The Court shall retain jurisdiction to enforce the terms and conditions of this Decree, to resolve disputes arising hereunder and for such other action as may be necessary or appropriate for construction or execution of the Decree.

12. Parties Bound. In accordance with the provisions of Federal Rule of Civil Procedure 65, the provisions of this Decree shall apply to and be binding upon the United States and SBI.

13. SBI Responsibility. In any action to enforce this Decree, SBI shall not assert as a defense the failure of its officers, directors, agents, trustees, servants, employees, successors, assigns, and contractors to take actions necessary to comply with this Decree unless SBI establishes that the failure resulted from a Force Majeure event as defined in Section VIII (Force Majeure).

14. No Warranty by the Plaintiff. The United States does not, by its consent to entry of this Decree, warrant or aver in any manner that SBI's compliance with this Decree will result in compliance with the provisions of applicable federal or state laws, regulations, or permit conditions. Notwithstanding the United States' review and approval of any data, reports or plans formulated pursuant to this Decree, SBI shall remain solely responsible for compliance with this Decree, the Clean Water Act, any Permit, and any other applicable state, federal, or local law or regulation.

15. Final Judgment. Upon approval and entry of this Decree by the Court, this Decree shall constitute a final judgment between and among the United States and SBI.

16. Purpose of Decree. It is the express purpose of this Decree to further the objectives of the Clean Water Act as well as regulations and permits issued pursuant to that Act. All obligations in this Decree shall have the objective of causing SBI to be and remain in full compliance with the Act, the regulations and permits issued pursuant to the Clean Water Act, as well as state laws, regulations, and permits authorized pursuant to the Clean Water Act.

17. Right of Entry. Until termination of this Decree, the United States and its representatives, contractors, consultants and attorneys shall each have the authority to enter, at reasonable times and upon presentation of credentials, any Project in the State of Idaho or any location at which records relating to this Decree are kept for the purposes of:

i. monitoring SBI's compliance with this Decree;

ii. verifying any data or information submitted by SBI pursuant to this Decree;

iii. reviewing and copying any records required to be kept by SBI

pursuant to this Decree.

18. No Limitation on Other Rights of Entry. Nothing in Paragraph 17 (Right of Entry) or any other provision of this Decree shall be construed to limit any statutory right of entry or access or other information gathering authority pursuant to any federal, state, or local law.

19. Preservation of Records. In addition to complying with any other applicable local, state, or federal records preservation requirements, until one calendar year after termination of this Decree, SBI shall preserve at least one legible copy of all documents in its possession, custody, or control that relate to the performance of SBI's obligations under this Decree. Within 30 days of retaining or employing any agent, consultant, or contractor for the purpose of carrying out the terms of this Decree, SBI shall enter into an agreement with any such agent, consultant, or contractor requiring such person to provide SBI a copy of all documents relating to the performance of SBI obligations under this Decree.

20. Authority to Sign Decree. The undersigned representative of SBI certifies that he or she is authorized to enter into this Decree and to execute and legally bind SBI to the terms and conditions of this Decree and meets the requirements for authorized signatory found in 40 C.F.R. § 122.22.

21. Designation of Agent for Service. SBI shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on SBI behalf with respect to all matters arising under or relating to this Decree.

22. Notification.

a. When written notification or communication is required by the terms of this Decree, such notification or communication shall be addressed to the following individuals at the

addresses specified below (or to such other addresses as may be designated by written notice to the parties):

As to the United States:

Chief, Environmental Enforcement Section
Environment & Natural Resources Division
U.S. Department of Justice
Box 7611, Ben Franklin Station
Washington, D.C. 20044-7611
Reference Case No. 90-5-1-1-08052

United States Attorney
District of Idaho
P.O. Box 32
Boise, Idaho 83707
(208) 334-1211

Mark Ryan
U.S. EPA, Region 10
1435 N. Orchard St.
Boise, Idaho 83706
ryan.mark@eap.gov

Andrew Stewart
Attorney-Advisor
U.S. EPA, OECA/ORE/WED
Ariel Rios Building South
1200 Pennsylvania Avenue, NW
Mailstop 2243A
Washington, D.C. 20460
202-564-1463
stewart.andrew@epa.gov

As to SBI:

Tamarah Knapp Hancock, General Counsel
Scarsella Brothers, Inc.
8404 South 196th
Kent, WA 98031
(253) 872-7173
Tamarah.K@Scarsellabros.com

with copy to:

Tad H. Shimazu
Williams, Kastner & Gibbs, PLLC
601 Union St., Suite 4100
Seattle, WA 98101
(206) 628-2438
tshimazu@wkg.com

b. Notifications to or communications with SBI or the United States shall be deemed

submitted on the date they are postmarked and sent by certified mail, return receipt requested.

23. Certification of Reports and Submissions. Except as otherwise expressly provided in this Decree, any report or other document submitted by SBI pursuant to this Decree which makes any representation concerning compliance or noncompliance with any requirement of this Decree shall be certified by a Responsible Officer of SBI. The certification shall be in the following form:

> I certify that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to evaluate the information submitted. I certify that the information contained in or accompanying this submittal is true, accurate, and complete. As to those identified portion(s) of this submittal for which I cannot personally verify the accuracy, I certify that this submittal and all attachments were prepared in accordance with procedures designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those directly responsible for gathering the information, or the immediate supervisor of such person(s), the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.
>
> Signature:_____
> Name: _____
> Title: _____
> Date: _____

24. Entire Agreement. This Decree is the final, complete, and exclusive agreement between the Parties. The Parties acknowledge that there are no inducements, promises, representations, agreements, or understandings relating to the settlement other than those expressly contained in this Decree.

25. Modification. The deadlines set forth in this Decree may be modified by this Court in accordance with Section VII (Dispute Resolution) or by written agreement of the parties and notification to the Court. Modifications by agreement of the parties shall be effective 10 days

after the date the notice is filed with the Court unless otherwise ordered by the Court. With respect to all other provisions of this Decree, except as expressly provided in Section VII (Dispute Resolution), there shall be no modification of this Decree without written agreement of all the parties to this Decree and approval by the Court. Unanticipated or increased costs or expenses associated with the implementation of actions called for by this Decree and economic hardship or changed financial circumstances shall not serve as a basis for modifications of this Decree.

26. Public Notice. The parties acknowledge and agree that the final approval and entry of this Decree is subject to the requirements of 28 C.F.R. § 50.7, which provides that notice of proposed consent decrees be given to the public and that the public shall have at least 30 days in which to make any comments. The United States may withhold or withdraw its consent to this Decree based on such comments.

27. Agreement to Entry of Decree. SBI hereby agrees not to oppose entry of this Decree by this Court or to challenge any provision of this Decree.

28. Termination of Decree.

a. No sooner than 4 years after entry of this Decree, SBI may request the United States' consent to termination of this Decree. In seeking such consent, SBI shall demonstrate that:

i. SBI has paid all monies, civil penalties, interest, and stipulated penalties due under this Decree;

ii. As of the date SBI provides any notice or request to terminate this Decree, EPA has not provided SBI with any Notice of Dispute invoking the Dispute Resolution

provisions of this Decree, and there are no unresolved matters subject to dispute resolution pursuant to Section VII (Dispute Resolution); and

iii. No enforcement action under this Decree is pending.

b. The United States shall notify SBI in writing within 30 days of receiving a request to terminate by SBI whether it does or does not object to the termination of the Decree. If the United States does not object, then the parties shall jointly file a motion to terminate with the Court. If the United States objects to such request, the parties will work together for a period of at least 30 days in an effort to informally resolve any disputes. The Decree shall remain in effect pending resolution of the dispute by the parties, or, ultimately, the Court.

c. The Court may terminate this Decree 60 days after SBI has filed with the Court a motion to terminate the Decree and served a copy of that motion upon the United States, so long as either (1) SBI's motion to terminate the Decree is accompanied by a true and correct copy of the United States' notice that it does not object to the termination, (2) certification by SBI that the United States did not respond to SBI's request to terminate, or (3) SBI prevails in any motion it files to terminate the decree.

d. Any dispute involving SBI's right to terminate the Decree shall not be subject to the dispute resolution process of Section VII.

V. EFFECT OF DECREE

29. Covenants Not to Sue by Plaintiff. In consideration of the payment of the penalty required by Paragraph 6 (Civil Penalty) and the full and satisfactory compliance by SBI with the terms of this Decree, the United States hereby covenants not to sue or take administrative action against SBI pursuant to the Clean Water Act or any state law authorized pursuant to 33 U.S.C. §

1342(b) for civil violations or alleged civil violations of the conditions, limitations and requirements of the Federal General Permit, as alleged in the United States' Complaint through the date of lodging of this Decree at the Mica to Bellgrove Project.

30. No Effect on Third Parties. Except as expressly provided in Paragraph 7 (Agreement Not to Seek Indemnification or Insurance Coverage), this Decree does not limit or affect the rights of SBI or of the United States against any third parties not party to this Decree, nor does it limit the rights of third parties not party to this Decree, against SBI except as otherwise provided by law. This Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Decree.

31. United States' Reservations of Rights.

a. The United States reserves all rights not expressly waived in this Decree.

b. The United States reserves all rights and remedies, legal and equitable, available to enforce the provisions of this Decree.

c. The United States reserves the right to seek and obtain criminal sanctions against any person, including SBI.

d. The United States reserves the right to undertake any action against any person, including SBI in response to conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment.

32. SBI Reservation of Rights; Effect of Decree. Except as provided by the express terms of this Decree, SBI reserves any rights or defenses available to it in any future action brought by the United States, to enforce this Decree, the Clean Water Act, or any other statutes, regulations, or rules.

33. Not a Permit Modification. This Decree is neither a permit nor a modification of existing permits under any federal, state, or local law, and in no way relieves SBI of its responsibilities to comply with all applicable federal, state, and local laws and regulations.

VI. STIPULATED PENALTIES

34. Stipulated Penalty Amounts. If EPA determines that SBI has failed to comply fully and timely with the requirements of this Decree, SBI shall pay stipulated penalties in the following amounts:

a. for a failure to timely train Superintendents and Foreman assigned to a Project in accordance with Paragraph 2, $600.00 per person for each missed deadline. This $600.00 per day of construction per person violation for every day that the person fails to timely receive the applicable training;

b. for a failure to ensure that any Project has a properly trained WPCM assigned to a Project in accordance with the requirements of Paragraph 3 - $600.00 per day of construction;

c. for a failure ensure that the WPCM visits each Project on a frequent basis and in no instance less than once per week during construction season, in accordance with Paragraph 3, $600.00 for each missed visit.

d. for a failure to provide timely notices or reports as required by Paragraph 4 - $600.00 per day until the submission is received; and,

e. for a failure to timely submit a complete Annual Report per Paragraph 5 - $600.00 per day until the submission is received.

35. Payment of Stipulated Penalties. All penalties owed to the United States under this Section shall be due and payable within 30 days of SBI's receipt from the United States of a

demand for payment of the penalties, unless SBI invokes the procedures under Section VII (Dispute Resolution). SBI shall forward the amount due by Electronic Funds Transfer ("EFT") to the United States Department of Justice lockbox bank referencing DOJ case number 90-5-1-1-08052 and the United States Attorney General's Office file number 2004CV00095 in accordance with instructions provided by the United States upon entry of this Decree. Any EFTs received at the United States Department of Justice lockbox bank after 11:00 a.m. (Eastern Time) will be credited on the next Business Day. After payment, SBI shall mail a cover letter specifying the amount and date of payment, civil docket number and reason for payment, to the United States in accordance with Paragraph 22 (Notification).

36. Accrual of Stipulated Penalties. Stipulated penalties shall begin to accrue on the day after performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Decree. Stipulated penalties shall accrue regardless of whether the United States has notified SBI of a violation.

37. No Effect on Obligation to Comply. The payment of penalties shall not alter in any way SBI's obligation to comply with the requirements of this Decree.

38. Effect of Dispute Resolution. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, SBI shall pay accrued penalties determined to be owing to the United States within 15 days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to the Court and the United States prevails in whole or in part, SBI shall pay all accrued penalties determined by the Court to be owed within 30 days of receipt of the Court's decision or order, except as provided in subparagraph (c) of this Paragraph;

c. If the Court's decision is appealed by any party, SBI shall pay all accrued penalties determined by the District Court to be owing into an interest-bearing escrow account within 30 days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every 30 days. Within 15 days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to the United States or to SBI to the extent that they prevail.

39. Interest on Late Payment. If SBI fails to pay stipulated penalties when due, SBI shall pay interest accrued at the rate established by the Secretary of the Treasury under 31 U.S.C. § 3717 beginning upon the day the stipulated penalties were due.

40. Non-Exclusivity of Remedy. Stipulated penalties are not the United States' exclusive remedy for violations of this Decree. The United States expressly reserves the right to seek any other relief it deems appropriate, including but not limited to, action for statutory penalties, contempt, or injunctive relief against SBI. However, the amount of any statutory penalty assessed for a violation of this Decree shall be reduced by an amount equal to the amount of any stipulated penalty assessed and paid pursuant to this Decree for the same violation.

VII. DISPUTE RESOLUTION

41. Exclusive Remedy. Unless otherwise expressly provided for in this Decree, the Dispute Resolution procedures of this Section shall be the exclusive mechanism to resolve

disputes arising under this Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of SBI that have not been disputed in accordance with this Section.

42. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen on the day SBI hand delivers the United States a written Notice of Dispute or on the day following delivery by overnight courier, or three days following delivery by U.S. Mail. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed 60 days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 45 days after the conclusion of the informal negotiation period, SBI invokes formal dispute resolution procedures set forth in Paragraph 43 (Formal Dispute Resolution).

43. Formal Dispute Resolution.

a. Within 45 days after the conclusion of the informal negotiation period, SBI may invoke formal dispute resolution procedures by serving on the United States a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting SBI's position and any supporting documentation relied upon by SBI.

b. The United States shall serve its Statement of Position within 45 days of receipt of SBI's Statement of Position. The United States' Statement of Position shall include, but may not be limited to, any factual data, analysis, or opinion supporting that position and all supporting

document relied upon by the United States. The United States' Statement of Position shall be binding on SBI unless SBI files a motion for judicial review of the dispute in accordance with Paragraph 44 (Petitions to the Court).

44. Petitions to the Court. In the event that the parties cannot resolve a dispute by informal negotiations as set forth above, the following procedures shall control:

a. SBI may seek judicial review of the dispute by filing with the Court and serving on the United States a motion requesting judicial resolution of the dispute. The motion shall be filed within 45 days of receipt of the United States' Statement of Position set forth in Paragraph 43(b) (Formal Dispute Resolution). The motion shall contain a written statement of SBI's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of this Decree.

b. The United States shall respond to SBI's motion within 45 days of receipt of the motion, unless the parties stipulate otherwise.

c. SBI may file a reply memorandum within 30 days of receipt of the United States' response.

d. In any dispute under this Paragraph, SBI shall bear the burden of demonstrating that its position complies with this Decree and the Clean Water Act and that SBI is entitled to relief under applicable law. The United States reserves the right to argue (a) that its position is reviewable only on the administrative record and (b) shall be upheld unless arbitrary and capricious or otherwise not in accordance with law. For purposes of this Decree, the administrative record shall comprise the Statements of Position exchanged by the Parties

pursuant to Paragraph 43 (Formal Dispute Resolution), including any documents attached to or incorporated by reference in those Statements. SBI reserves the right to argue that its position is based on a reasonable interpretation of a statute, regulation, or permit, or a reasonable interpretation of this Decree and that the United States' litigation position is not entitled to any deference.

45. Effect on Other Obligations. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of SBI under this Decree not directly in dispute, unless the United States agrees in writing or the Court orders otherwise.

46. Computation of Time. The computation of any period of time set forth in this Section VII shall be governed by Rule 6 of the Federal Rules of Civil Procedure.

VIII. FORCE MAJEURE

47. Definition of Force Majeure. A "force majeure event" is any event beyond the control of Defendant, its contractors, or any entity controlled by Defendant that delays the performance of any obligation under this Decree despite Defendant's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include Defendant's financial inability to perform any obligation under this Decree. Failure to apply for a required permit or approval or to provide in a timely manner all information required to obtain a permit or approval that is necessary to meet the requirements of this Decree, or failure of SBI to approve contracts shall not, in any event, be considered Force Majeure events.

48. Required Notification for Force Majeure. SBI shall notify the United States orally and by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time SBI first knew of, or in the exercise of reasonable diligence under the circumstances should have known of, any event which might constitute a Force Majeure event. SBI shall make the oral notification required by this Paragraph by calling Mark Pollins at 202-564-4001 and sending him a message by electronic mail pollins.mark@epa.gov. If Mr. Pollins is not available by telephone, SBI may satisfy the telephone notice requirement by leaving a message for him stating that SBI had called to notify him pursuant to this Paragraph. The United States may designate an alternative representative to receive oral notification at its discretion by sending SBI a written designation in accordance with Paragraph 22 (Notification). The written notice SBI submits pursuant to this Paragraph shall indicate whether SBI claims that the delay should be excused due to a Force Majeure event. The notice shall describe in detail the basis for SBI's contention that it experienced a Force Majeure delay, the anticipated length of the delay, the precise cause or causes of the delay, the measures taken or to be taken to prevent or minimize the delay, and the timetable by which those measures will be implemented. SBI shall adopt all reasonable measures to avoid or minimize such delay. Failure to so notify the United States shall render this Section VIII (Force Majeure) void and of no effect as to the event in question, and shall be a waiver of SBI right to obtain an extension of time for its obligations based on such event.

49. Procedures for Extension. If the United States finds that a delay in performance is, or was, caused by a Force Majeure event, the United States shall extend the time for performance, in writing, for a period to compensate for the delay resulting from such event, and

stipulated penalties shall not be due for such a period. In proceedings on any dispute regarding a delay in performance, the dispute resolution provisions of Section VII (Dispute Resolution) shall apply, and SBI shall have the burden of proving that the delay is, or was, caused by a Force Majeure event and that the amount of additional time requested is necessary to compensate for that event.

50. Effect on Other Obligations. Compliance with a requirement of this Decree shall not by itself constitute compliance with any other requirement. An extension of one compliance date based on a particular event shall not automatically extend any other compliance date. SBI shall make an individual showing of proof regarding the cause of each delayed incremental step or other requirement for which an extension is sought.

SO ORDERED THIS _____ DAY OF , 2006

_____
EDWARD J. LODGE
UNITED STATES DISTRICT JUDGE

WE HEREBY CONSENT to the entry of the Decree in United States v. Idaho Transportation Department subject to the public notice requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Date: 4/27/06

SUE ELLEN WOOLDRIDGE
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20530

Date: 5/1/06

DAVID L. DAIN
Senior Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
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(202) 514-3644

Date: 5/1/06

DEBORAH A. FERGUSON
Assistant U.S. Attorney
District of Idaho
P.O. Box 32
Boise, ID 83707
(208) 334-1211

Date: 4/28/06

WALKER B. SMITH
Director, Office of Civil Enforcement
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Date: 4/19/06

ANDREW R. STEWART
Attorney-Advisor
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460
(202) 564-1463

Date: 4/19/06

MARK RYAN
Assistant Regional Counsel
U.S. Environmental Protection Agency
1435 N. Orchard Street
Boise, Idaho 83716
Telephone: (208) 378-5768

WE HEREBY CONSENT to the entry of the Decree in United States v. Idaho Transportation Department subject to the public notice requirements of 28 C.F.R. §50.7.

FOR SCARSELLA BROTHERS, INC.

Date: 4-11-06

Frank Scarsella, President

Appendix A - Training

– Minimum of 16 hours of training (classroom and field).

This training requirement may be satisfied by successfully completing a training course presented by a third party that covers information on the following:

- History of Clean Water Act and past violations;
- Roles of EPA, State agencies and Contractors in storm water management for construction projects;
- How construction sites can potentially negatively affect water quality;
- Basic principles of erosion, sediment control, and non-storm water/waste management control;
- Storm Water related Standard Plans and Specifications and BMPs;
- Selection and implementation of erosion control, sediment control, and non-storm water management/waste; management control BMPs;
- How to prepare, update and propose amendments to a SWPPP for construction projects;
- Inspection, maintenance, and repair program for storm water BMPs; and
- Field demonstration of BMP implementation and installation (minimum of 4 hours for field portion of class).

Each training session shall include a written examination intended to ensure the participants knowledge of the subjects covered.

Each participant who attends the entire session and receives a passing grade on the written examination shall be issued a certification. That certification shall include the participants name, the date and location of the training and the name of the instructor(s). The Responsible Contractor shall maintain copies of all such certifications.

Alternatively, this training requirement may be satisfied by successfully completing the AGC Education Foundation class "Stormwater Best Management Practices" identified below, so long as the curriculum and structure of that class remains in compliance with the above referenced requirements.

Pre-Approved Program:

AGC Education Foundation's class entitled: ENVIRONMENTAL CONSTRUCTION - STORMWATER: CONSTRUCTION BEST MANAGEMENT PRACTICES (BMPs) FIELD TRAINING CERTIFICATION

(2 Days) This class will qualify participants as a Certified Erosion and Sediment Control Lead (CESCL). It shall teach: the correct methods to control erosion and sediment; the proper way to install different storm water control devices; and how to inspect BMPs to make sure they are working on the construction site. This course consists of one day of classroom exercises and one day of field training by qualified experts and teaches participants how to choose, install, inspect and maintain Best Management Practices (BMPs) cost-effectively. The class meets the training and certification requirements of BMP C160 Certified Erosion and Sediment Control Lead (CESCL), as set forth in Ecology's Stormwater Management Manuals for Eastern and Western Washington. Persons completing this training will also receive WSDOT Certification as Erosion and Sediment Control Leads (ESCL).